Supreme Court, U.S.
FILED
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No. 04 220 AUG 16 2004
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LORI DENISE RHOADS,
Petitioner

v.

FEDERAL DEPOSIT INSURANCE CORP.,
IN ITS CAPACITY AS RECEIVER FOR
STANDARD FEDERAL SAVINGS BANK AND
STANDARD FEDERAL SAVINGS ASSOCIATION
AND RESOLUTION TRUST CORPORATION, A/K/A
STANDARD FEDERAL SAVINGS & LOAN
ASSOCIATION, AS RECEIVER
Respondents

On Petition for Writ of Certiorari
To The Fourth Circuit Court of Appeals

APPENDIX B TO THE PETITION FOR WRIT OF CERTIORARI

LORI DENISE RHOADS
Petitioner Pro Se
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GERMANTOWN, MD 20875
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Volume B

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

FILED
June 4, 2004

No. 03-2373

LORI RHOADS

Plaintiff-Appellant

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as receiver for Standard Federal Savings Bank and Standard Federal Savings Association

Defendant-Appellee

and

RESOLUTION TRUST CORPORATION, a/k/a Standard Federal Savings & Loan Association, as Receiver

Defendant

ORDER

Appellant has filed an untimely petition for rehearing and rehearing en banc. This Court strictly enforces the time limits for filing petitions for rehearing and rehearing en banc.

This Court denies the petition for rehearing and rehearing en banc as untimely filed.

For the Court — By Direction

/s/ Patricia S. Connor
CLERK

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

FILED
September 7, 2001

No. 98-2374
CA-94-1548-B

LORI RHOADS

Plaintiff-Appellant

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as receiver for Standard Federal Savings Bank and Standard Federal Savings Association

Defendant-Appellee

GEORGETOWN APPELLATE LITIGATION CLINIC

Amicus Curiae

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FILED
US DISTRICT COURT
DISTRICT OF MARYLAND
2002 DEC 16 P2:08

LORI D. RHOADS
Plaintiff

v.

Case No.
CCB-94-1548

FEDERAL DEPOSIT
INSURANCE CORPORATION,
AS RECEIVER FOR
STANDARD FEDERAL
SAVINGS ASSOCIATION
Defendant

ORDER OF JUDGMENT

The jury having returned a verdict in favor of the plaintiff Lori Rhoads against the defendant FDIC, it is this 16th day of December, 2002,

ORDERED,

I. Judgment is entered in favor of plaintiff Lori Rhoads against defendant FDIC, in the amount of $120,006.00 for monetary damages; and

2. Any and all prior rulings made by the Court disposing of any claims against any parties are incorporated by reference herein, and this Order shall be deemed to be a final judgment within the meaning of Fed. R. Civ. P. 58.

"s/Catherine C. Blake"
Catherine C. Blake
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LORI D. RHOADS

v. Civil No. B-94-1548

FEDERAL DEPOSIT
INSURANCE CORPORATION
As Receiver for Standard
Federal Savings
Association,

ORDER

Presently pending before the Court is a Motion for Judgment as a Matter of law, or Alternatively, for a New Trial of Plaintiff (Paper 105) pursuant to Federal Rules 50 and 59. The issues raised by the motion have been briefed and the Court has had the benefit of oral argument at a hearing held today.

In accordance with the Court's oral opinion and rulings rendered in open court at the conclusion of the hearing, IT IS this 12th day of August, 1998, by the United States District Court for the District of Maryland,

ORDERED:

(1) That plaintiff's Motion for Judgment as a Matter of Law, or Alternatively, for a New Trial (Paper 105), filed on behalf of Lori D. Rhoads IS DENIED; and

(2) That the Clerk shall mail a copy of this Order forthwith to counsel of record.

"s/Walter E. Black, Jr."
Walter E. Black, Jr.
Senior Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LORI D. RHOADS

v. Civil No. B-94-1548

FEDERAL DEPOSIT
INSURANCE CORPORATION
As Receiver for Standard
Federal Savings
Association, et. al.

ORDER OF JUDGMENT

The jury having returned a verdict in favor of the defendant against the plaintiff, IT IS this 4th day of March, 1998, by the United States District Court for the District of Maryland,

ORDERED:

(1) That Judgment is entered in favor of defendant against plaintiff, with costs;

(2) That any and all prior rulings made by the Court disposing of any claims against any parties are incorporated by reference herein, and this Order shall be deemed to be a final judgment within the meaning of Federal Rule Civil Procedure 58; and

(3) That the Clerk shall mail a copy of the Order forthwith to counsel of record.

"s/Walter E. Black, Jr."
Walter E. Black, Jr.
Senior Judge

-CITE-
42 USC Sec. 12101 01/05/99

-EXPCITE-
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

-HEAD-
Sec. 12101. Findings and purpose

-STATUTE-
(a) Findings
The Congress finds that -
(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication

barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter -

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals

with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

-SOURCE-

(Pub. L. 101-336, Sec. 2, July 26, 1990, 104 Stat. 328.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

-MISC2-

SHORT TITLE

Section 1(a) of Pub. L. 101-336 provided that: "This Act (enacting this chapter and section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending section 706 of Title 29, Labor, and sections 152, 221, and 611 of Title 47, and enacting provisions set out as notes under sections 12111, 12131, 12141, 12161, and 12181 of this title) may be cited as the 'Americans with Disabilities Act of 1990'."

-CITE-

42 USC Sec. 12102 01/05/99

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

-HEAD-

Sec. 12102. Definitions

-STATUTE-

As used in this chapter:

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes -

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability

The term "disability" means, with respect to an individual -

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

-SOURCE-

(Pub. L. 101-336, Sec. 3, July 26, 1990, 104 Stat. 329.)

-TRANS-

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12211, 12581, 12594 of this title; title 20 sections 1003, 1228c, 2302, 9202; title 29 section 2801; title 40 section 484; title 47 section 255.

-CITE-

42 USC SUBCHAPTER I - EMPLOYMENT 01/05/99

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER I - EMPLOYMENT

.

-HEAD-

SUBCHAPTER I - EMPLOYMENT

-SECREF-

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1981a, 12201, 12203, 12206 of this title; title 2 section 1311; title 3 section 411; title 29 sections 723, 728a, 732, 772, 791, 793, 794.

-CITE-42 USC Sec. 12111 01/05/99

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER I - EMPLOYMENT

-HEAD-
Sec. 12111. Definitions

-STATUTE-
As used in this subchapter:
(1) Commission
The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.
(2) Covered entity
The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.
(3) Direct threat
The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.
(4) Employee
The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.
(5) Employer
(A) In general
The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for

each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term "employer" does not include -

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 801 et seq.). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(7) Person, etc.

The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and

if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include -

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number,

type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

-SOURCE-

(Pub. L. 101-336, title I, Sec. 101, July 26, 1990, 104 Stat. 330;

Pub. L. 102-166, title I, Sec. 109(a), Nov. 21, 1991, 105 Stat.

1077.)

-REFTEXT-

REFERENCES IN TEXT

The effective date of this subchapter, referred to in par. (5)(A), is 24 months after July 26, 1990, see section 108 of Pub. L. 101-336, set out as an Effective Date note below.

The Controlled Substances Act, referred to in par. (6)(A), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (Sec. 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

This chapter, referred to in par. (10)(B)(i), was in the original "this Act", meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

-MISC2-

AMENDMENTS

1991 - Par. (4). Pub. L. 102-166 inserted at end "With

respect to employment in a foreign country, such term includes an individual who is a citizen of the United States."

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102-166, set out as a note under section 2000e of this title.

EFFECTIVE DATE

Section 108 of title I of Pub. L. 101-336 provided that: "This title (enacting this subchapter) shall become effective 24 months after the date of enactment (July 26, 1990)."

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5057, 12581, 12594, 12635 of this title.

-CITE-

42 USC Sec. 12112 01/05/99

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER I - EMPLOYMENT

-HEAD-

Sec. 12112. Discrimination

-STATUTE-

(a) General rule

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application

procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term "discriminate" includes -

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration-

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified

individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be

engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on -

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control, of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if -

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that -

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of

subparagraphs (B) and (C) of paragraph (3).

-SOURCE-
(Pub. L. 101-336, title I, Sec. 102, July 26, 1990, 104 Stat. 331;
Pub. L. 102-166, title I, Sec. 109(b)(2), Nov. 21, 1991, 105 Stat.
1077.)

-MISC1-
AMENDMENTS
1991 - Subsecs. (c), (d). Pub. L. 102-166 added subsec. (c) and redesignated former subsec. (c) as (d).
EFFECTIVE DATE OF 1991 AMENDMENT
Amendment by Pub. L. 102-166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102-166, set out as a note under section 2000e of this title.

-SECREF-
SECTION REFERRED TO IN OTHER SECTIONS
This section is referred to in sections 1981a, 12209 of this title; title 2 sections 1202, 1311; title 3 section 411.

-CITE-
42 USC Sec. 12113 01/05/99

-EXPCITE-
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER I - EMPLOYMENT

-HEAD-
Sec. 12113. Defenses

-STATUTE-

(a) In general

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) List of infectious and communicable diseases

(1) In general

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall -

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissability (FOOTNOTE 1) to the general public.

(FOOTNOTE 1) So in original. Probably should be "transmissibility".

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissability (FOOTNOTE 1) published by the Secretary of Health and Human Services.

-SOURCE-

(Pub. L. 101-336, title I, Sec. 103, July 26, 1990, 104 Stat. 333.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title;

title 2 sections 1202, 1311; title 3 section 411.

-CITE-
42 USC Sec. 12114 01/05/99

-EXPCITE-
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER I - EMPLOYMENT

-HEAD-
Sec. 12114. Illegal use of drugs and alcohol

-STATUTE-
(a) Qualified individual with a disability

For purposes of this subchapter, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who -

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer

engaging in the illegal use of drugs.

(c) Authority of covered entity

A covered entity -

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that -

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are

employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to -

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

-SOURCE-

(Pub. L. 101-336, title I, Sec. 104, July 26, 1990, 104 Stat. 334.)

-REFTEXT-

REFERENCES IN TEXT

The Drug-Free Workplace Act of 1988, referred to in subsec. (c)(3), is subtitle D (Sec. 5151-5160) of title V of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4304, which is classified generally to chapter 10 (Sec. 701 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 41 and Tables.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 sections 1202, 1311; title 3 section 411.

-CITE-

42 USC Sec. 12115 01/05/99

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER I - EMPLOYMENT

-HEAD-

Sec. 12115. Posting notices

-STATUTE-

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the

manner prescribed by section 2000e-10 of this title.

-SOURCE-
(Pub. L. 101-336, title I, Sec. 105, July 26, 1990, 104 Stat. 336.)

-CITE-
42 USC Sec. 12116 01/05/99

-EXPCITE-
TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER I - EMPLOYMENT

-HEAD-
Sec. 12116. Regulations

-STATUTE-
Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

-SOURCE-
(Pub. L. 101-336, title I, Sec. 106, July 26, 1990, 104 Stat. 336.)

-SECREF-
SECTION REFERRED TO IN OTHER SECTIONS
This section is referred to in section 12117 of this title.

-CITE-
42 USC Sec. 12117 01/05/99

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES
SUBCHAPTER I - EMPLOYMENT

-HEAD-
Sec. 12117. Enforcement

-STATUTE-
(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January

16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

-SOURCE-

(Pub. L. 101-336, title I, Sec. 107, July 26, 1990, 104 Stat. 336.)

-REFTEXT-

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (Sec. 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1981a, 12203 of this title; title 2 section 1311; title 3 section 411.

-CITE-

42 USC Sec. 12203 01/05/99

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

-HEAD-

Sec. 12203. Prohibition against retaliation and coercion

-STATUTE-

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

-SOURCE-

(Pub. L. 101-336, title V, Sec. 503, July 26, 1990, 104 Stat. 370.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

-CITE-
29 USC Sec. 2601 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE

-HEAD-
Sec. 2601. Findings and purposes

-STATUTE-
(a) Findings
Congress finds that -
(1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;
(2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;
(3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;
(4) there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;
(5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men; and
(6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.
(b) Purposes
It is the purpose of this Act -

(1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity;

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;

(3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;

(4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

(5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

-SOURCE-

(Pub. L. 103-3, Sec. 2, Feb. 5, 1993, 107 Stat. 6.)

-REFTEXT-

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, known as the Family and Medical Leave Act of 1993, which enacted this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amended section 2105 of Title 5, and enacted provisions set out as notes below. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

-MISC2-

EFFECTIVE DATE

Section 405 title IV of Pub. L. 103-3 provided that:

"(a) Title III. - Title III (enacting subchapter II of this chapter) shall take effect on the date of the enactment of this Act (Feb. 5, 1993).

"(b) Other Titles. -

"(1) In general. - Except as provided in paragraph (2), titles I, II, and V and this title (enacting subchapters I and III of this chapter, sections 60m and 60n of Title 2, The-Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, and amending section 2105 of Title 5) shall take effect 6 months after the date of the enactment of this Act.

"(2) Collective bargaining agreements. - In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph (1), title I (enacting subchapter I of this chapter) shall apply on the earlier of -

"(A) the date of the termination of such agreement; or

"(B) the date that occurs 12 months after the date of the enactment of this Act."

SHORT TITLE

Section 1(a) of Pub. L. 103-3 provided that: "This Act (enacting this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amending section 2105 of Title 5, and enacting provisions set out above) may be cited as the 'Family and Medical Leave Act of 1993'."

-SECREF-

ACT REFERRED TO IN OTHER SECTIONS

The Family and Medical Leave Act of 1993 is referred to in title 2 sections 1302, 1312, 1371, 1434; title 3 section 402; title 40 section 207b.

-CITE-

29 USC SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-
SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-SECREF-
SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2632, 2654 of this title; title 42 section 12631.

-CITE-
29 USC Sec. 2611 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-
Sec. 2611. Definitions

-STATUTE-
As used in this subchapter:
(1) Commerce

The terms "commerce" and "industry or activity

affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (1) and

(3) of section 142 of this title.

(2) Eligible employee

(A) In general

The term "eligible employee" means an employee who has been employed -

(i) for at least 12 months by the employer with respect to whom leave is requested under section 2612 of this title; and

(ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

(B) Exclusions

The term "eligible employee" does not include -

(i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5; or

(ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(C) Determination

For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 207 of this title shall apply.

(3) Employ; employee; State

The terms "employ", "employee", and "State" have the same meanings given such terms in subsections (c), (e), and (g) of section 203 of this title.

(4) Employer

(A) In general

The term "employer" -

(i) means any person engaged in commerce or in

any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes -

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer;

(iii) includes any "public agency", as defined in section 203(x) of this title; and

(iv) includes the General Accounting Office and the Library of Congress.

(B) Public agency

For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(5) Employment benefits

The term "employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan", as defined in section 1002(3) of this title.

(6) Health care provider

The term "health care provider" means -

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(B) any other person determined by the Secretary to be capable of providing health care services.

(7) Parent

The term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an

employee when the employee was a son or daughter.

(8) Person

The term "person" has the same meaning given such term in section 203(a) of this title.

(9) Reduced leave schedule

The term "reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(10) Secretary

The term "Secretary" means the Secretary of Labor.

(11) Serious health condition

The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves -

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider.

(12) Son or daughter

The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is -

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

(13) Spouse

The term "spouse" means a husband or wife, as the case may be.

-SOURCE-

(Pub. L. 103-3, title I, Sec. 101, Feb. 5, 1993, 107 Stat. 7; Pub.

L. 104-1, title II, Sec. 202(c)(1)(A), Jan. 23, 1995, 109 Stat. 9.)

-MISC1-

AMENDMENTS

1995 - Par. (4)(A)(iv). Pub. L. 104-1 added cl. (iv).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-1 effective one year after transmission to Congress of the study under section 1371 of Title 2, The Congress, see section 1312(e)(2) of Title 2. The study required under section 1371 of Title 2, dated Dec. 31, 1996, was transmitted to Congress by the Board of Directors of the Office of Compliance on Dec. 30, 1996.

EFFECTIVE DATE

Subchapter effective 6 months after Feb. 5, 1993, except that, in the case of collective bargaining agreements in effect on that effective date, subchapter applicable on the earlier of (1) the date of termination of such agreement, or (2) the date that occurs 12 months after Feb. 5, 1993, see section 405(b) of Pub. L. 103-3, set out as a note under section 2601 of this title.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 1312; title 3 section 412; title 42 section 12631.

-CITE-

29 USC Sec. 2612 01/23/00

-EXPCITE-

TITLE 29 - LABOR

CHAPTER 28 - FAMILY AND MEDICAL LEAVE

SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-

Sec. 2612. Leave requirement

-STATUTE-

(a) In general

(1) Entitlement to leave

Subject to section 2613 of this title, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(2) Expiration of entitlement

The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(b) Leave taken intermittently or on reduced leave schedule

(1) In general

Leave under subparagraph (A) or (B) of subsection (a)(1) of this section shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2) of this section, and section 2613(b)(5) of this title, leave under subparagraph (C) or (D) of subsection (a)(1) of this section may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) of this section beyond the amount of leave actually taken.

(2) Alternative position

If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) of this section, that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that -

(A) has equivalent pay and benefits; and

(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) Unpaid leave permitted

Except as provided in subsection (d) of this section, leave granted under subsection (a) may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 213(a)(1) of this title, the compliance of an employer with this subchapter by providing unpaid leave shall not affect the exempt status of the employee under such section.

(d) Relationship to paid leave

(1) Unpaid leave

If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this subchapter may be provided without compensation.

(2) Substitution of paid leave

(A) In general

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) of subsection (a)(1) of this section for any part of the 12-week period of such leave under such subsection.

(B) Serious health condition

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under

subparagraph (C) or (D) of subsection (a)(1) of this section for any part of the 12-week period of such leave under such subsection, except that nothing in this subchapter shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(e) Foreseeable leave

(1) Requirement of notice

In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) of this section is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) Duties of employee

In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) of this section is foreseeable based on planned medical treatment, the employee -

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

(B) shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(f) Spouses employed by same employer

In any case in which a husband and wife entitled to leave under subsection (a) of this section are employed by

the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken -

(1) under subparagraph (A) or (B) of subsection (a)(1) of this section; or

(2) to care for a sick parent under subparagraph (C) of such subsection.

-SOURCE-

(Pub. L. 103-3, title I, Sec. 102, Feb. 5, 1993, 107 Stat. 9.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2611, 2613, 2614, 2618 of this title; title 2 section 1312; title 3 section 412.

-CITE-

29 USC Sec. 2613 01/23/00

-EXPCITE-

TITLE 29 - LABOR

CHAPTER 28 - FAMILY AND MEDICAL LEAVE

SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-

Sec. 2613. Certification

-STATUTE-

(a) In general

An employer may require that a request for leave under subparagraph (C) or (D) of section 2612(a)(1) of this title be supported by a certification issued by the health care provider of the eligible employee or of the son,

daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) Sufficient certification

Certification provided under subsection (a) of this section shall be sufficient if it states -

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

(4)(A) for purposes of leave under section 2612(a)(1)(C) of this title, a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and

(B) for purposes of leave under section 2612(a)(1)(D) of this title, a statement that the employee is unable to perform the functions of the position of the employee;

(5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;

(6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 2612(a)(1)(D) of this title, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

(7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 2612(a)(1)(C) of this title, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in

their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(c) Second opinion

(1) In general

In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) of this section for leave under subparagraph (C) or (D) of section 2612(a)(1) of this title, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) of this section for such leave.

(2) Limitation

A health care provider designated or approved under paragraph

(1) shall not be employed on a regular basis by the employer.

(d) Resolution of conflicting opinions

(1) In general

In any case in which the second opinion described in subsection (c) of this section differs from the opinion in the original certification provided under subsection (a) of this section, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b) of this section.

(2) Finality

The opinion of the third health care provider concerning the information certified under subsection (b) of this section shall be considered to be final and shall be binding on the employer and the employee.

(e) Subsequent recertification

The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

-SOURCE-

(Pub. L. 103-3, title I, Sec. 103, Feb. 5, 1993, 107 Stat. 11.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2612 of this title; title 2 section 1312; title 3 section 412.

-CITE-

29 USC Sec. 2614 01/23/00

-EXPCITE-

TITLE 29 - LABOR

CHAPTER 28 - FAMILY AND MEDICAL LEAVE

SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-

Sec. 2614. Employment and benefits protection

-STATUTE-

(a) Restoration to position

(1) In general

Except as provided in subsection (b) of this section, any eligible employee who takes leave under section 2612 of this title for the intended purpose of the leave shall be entitled, on return from such leave -

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) Loss of benefits

The taking of leave under section 2612 of this title shall not result in the loss of any employment benefit

accrued prior to the date on which the leave commenced.

(3) Limitations

Nothing in this section shall be construed to entitle any restored employee to -

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) Certification

As a condition of restoration under paragraph (1) for an employee who has taken leave under section 2612(a)(1)(D) of this title, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees.

(5) Construction

Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 2612 of this title to report periodically to the employer on the status and intention of the employee to return to work.

(b) Exemption concerning certain highly compensated employees

(1) Denial of restoration

An employer may deny restoration under subsection (a) of this section to any eligible employee described in paragraph (2) if -

(A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(B) the employer notifies the employee of the intent

of the employer to deny restoration on such basis at the time the employer determines that such injury would occur; and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) Affected employees

An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) Maintenance of health benefits

(1) Coverage

Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 2612 of this title, the employer shall maintain coverage under any "group health plan" (as defined in section 5000 (b)(1) of title 26) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

(2) Failure to return from leave

The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 2612 of this title if -

(A) the employee fails to return from leave under section 2612 of this title after the period of leave to which the employee is entitled has expired; and

(B) the employee fails to return to work for a reason other than -

(i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 2612(a)(1) of this title; or

(ii) other circumstances beyond the control of the employee.

(3) Certification

(A) Issuance

An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by -

(i) a certification issued by the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate, in the case of an employee unable to return to work because of a condition specified in section 2612(a)(1)(C) of this title; or

(ii) a certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in section 2612(a)(1)(D) of this title.

(B) Copy

The employee shall provide, in a timely manner, a copy of such certification to the employer.

(C) Sufficiency of certification

(i) Leave due to serious health condition of employee

The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired.

(ii) Leave due to serious health condition of family member

The certification described in subparagraph (A)(i) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

-SOURCE-

(Pub. L. 103-3, title I, Sec. 104, Feb. 5, 1993, 107 Stat. 12.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2618, 2632 of this title; title 2 section 1312; title 3 section 412.

-CITE-

29 USC Sec. 2615 01/23/00

-EXPCITE-

TITLE 29 - LABOR

CHAPTER 28 - FAMILY AND MEDICAL LEAVE

SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-

Sec. 2615. Prohibited acts

-STATUTE-

(a) Interference with rights

(1) Exercise of rights

It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.

(2) Discrimination

It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.

(b) Interference with proceedings or inquiries

It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this subchapter;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any

right provided under this subchapter; or

(3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this subchapter.

-SOURCE-

(Pub. L. 103-3, title I, Sec. 105, Feb. 5, 1993, 107 Stat. 14.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2617 of this title; title 2 section 1312; title 3 section 412.

-CITE-

29 USC Sec. 2616 01/23/00

-EXPCITE-

TITLE 29 - LABOR

CHAPTER 28 - FAMILY AND MEDICAL LEAVE

SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-

Sec. 2616. Investigative authority

-STATUTE-

(a) In general

To ensure compliance with the provisions of this subchapter, or any regulation or order issued under this subchapter, the Secretary shall have, subject to subsection (c) of this section, the investigative authority provided under section 211(a) of this title.

(b) Obligation to keep and preserve records

Any employer shall make, keep, and preserve records pertaining to compliance with this subchapter in

accordance with section 211(c) of this title and in accordance with regulations issued by the Secretary.

(c) Required submissions generally limited to annual basis

The Secretary shall not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this subchapter or any regulation or order issued pursuant to this subchapter, or is investigating a charge pursuant to section 2617(b) of this title.

(d) Subpoena powers

For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 209 of this title.

-SOURCE-

(Pub. L. 103-3, title I, Sec. 106, Feb. 5, 1993, 107 Stat. 15.)

-CITE-

29 USC Sec. 2617 01/23/00

-EXPCITE-

TITLE 29 - LABOR

CHAPTER 28 - FAMILY AND MEDICAL LEAVE

SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-

Sec. 2617. Enforcement

-STATUTE-

(a) Civil action by employees

(1) Liability

Any employer who violates section 2615 of this title

shall be liable to any eligible employee affected -

(A) for damages equal to -

(i) the amount of -

(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 2615 of this title proves to the satisfaction of the court that the act or omission which violated section 2615 of this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 2615 of this title, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) Right of action

An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of -

(A) the employees; or

(B) the employees and other employees similarly situated.

(3) Fees and costs

The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) Limitations

The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate -

(A) on the filing of a complaint by the Secretary in an action under subsection (d) of this section in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) of this section in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1), unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) Action by Secretary

(1) Administrative action

The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 2615 of this title in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 206 and 207 of this title.

(2) Civil action

The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in subsection (a)(1)(A) of this section.

(3) Sums recovered

Any sums recovered by the Secretary pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums not paid to an

employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Limitation

(1) In general

Except as provided in paragraph (2), an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(2) Willful violation

In the case of such action brought for a willful violation of section 2615 of this title, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(3) Commencement

In determining when an action is commenced by the Secretary under this section for the purposes of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) Action for injunction by Secretary

The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary -

(1) to restrain violations of section 2615 of this title, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees; or

(2) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(e) Solicitor of Labor

The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.

(f) General Accounting Office and Library of Congress

In the case of the General Accounting Office and the

Library of Congress, the authority of the Secretary of Labor under this subchapter shall be exercised respectively by the Comptroller General of the United States and the Librarian of Congress.

-SOURCE-

(Pub. L. 103-3, title I, Sec. 107, Feb. 5, 1993, 107 Stat. 15; Pub.

L. 104-1, title II, Sec. 202(c)(1)(B), Jan. 23, 1995, 109 Stat. 9.)

-MISC1-

AMENDMENTS

1995 - Subsec. (f). Pub. L. 104-1 added subsec. (f).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-1 effective one year after transmission to Congress of the study under section 1371 of Title 2, The Congress, see section 1312(e)(2) of Title 2. The study required under section 1371 of Title 2, dated Dec. 31, 1996, was transmitted to Congress by the Board of Directors of the Office of Compliance on Dec. 30, 1996.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2616, 2618 of this title; title 2 section 1312; title 3 section 412.

-CITE-

29 USC Sec. 2618 01/23/00

-EXPCITE-

TITLE 29 - LABOR

CHAPTER 28 - FAMILY AND MEDICAL LEAVE

SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-

Sec. 2618. Special rules concerning employees of local educational agencies

-STATUTE-

(a) Application

(1) In general

Except as otherwise provided in this section, the rights (including the rights under section 2614 of this title, which shall extend throughout the period of leave of any employee under this section), remedies, and procedures under this subchapter shall apply to -

(A) any "local educational agency" (as defined in section 8801 of title 20) and an eligible employee of the agency; and

(B) any private elementary or secondary school and an eligible employee of the school.

(2) Definitions

For purposes of the application described in paragraph (1):

(A) Eligible employee

The term "eligible employee" means an eligible employee of an agency or school described in paragraph (1).

(B) Employer

The term "employer" means an agency or school described in paragraph (1).

(b) Leave does not violate certain other Federal laws

A local educational agency and a private elementary or secondary school shall not be in violation of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), section 794 of this title), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result of an eligible employee of such agency or school exercising the rights of such employee under this subchapter.

(c) Intermittent leave or leave on reduced schedule for instructional employees

(1) In general

Subject to paragraph (2), in any case in which an eligible employee employed principally in an instructional capacity by any such educational agency or school requests leave under subparagraph (C) or (D) of section 2612(a)(1) of this title that is foreseeable based on planned medical treatment and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the agency or school may require that such employee elect either -

(A) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or

(B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and that -

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(2) Application

The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an eligible employee who complies with section 2612(e)(2) of this title.

(d) Rules applicable to periods near conclusion of academic term

The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity by any such educational agency or school:

(1) Leave more than 5 weeks prior to end of term

If the eligible employee begins leave under section 2612 of this title more than 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if -

(A) the leave is of at least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of such term.

(2) Leave less than 5 weeks prior to end of term

If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 2612(a)(1) of this title during the period that commences 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if -

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of such term.

(3) Leave less than 3 weeks prior to end of term

If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 2612(a)(1) of this title during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

(e) Restoration to equivalent employment position

For purposes of determinations under section 2614(a)(1)(B) of this title (relating to the restoration of an eligible employee to an equivalent position), in the case of a local educational agency or a private elementary or secondary school, such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements.

(f) Reduction of amount of liability

If a local educational agency or a private elementary or secondary school that has violated this subchapter proves to the satisfaction of the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a

violation of this subchapter, such court may, in the discretion of the court, reduce the amount of the liability provided for under section 2617(a)(1)(A) of this title to the amount and interest determined under clauses (i) and (ii), respectively, of such section.

-SOURCE-

(Pub. L. 103-3, title I, Sec. 108, Feb. 5, 1993, 107 Stat. 17; Pub.

L. 103-382, title III, Sec. 394(e), Oct. 20, 1994, 108 Stat. 4027.)

-REFTEXT-

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (Sec. 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (Sec. 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

-MISC2-

AMENDMENTS

1994 - Subsec. (a)(1)(A). Pub. L. 103-382 substituted "section

8801 of title 20" for "section 2891(12) of title 20".

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2632 of this title.

-CITE-
29 USC Sec. 2619 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER I - GENERAL REQUIREMENTS FOR LEAVE

-HEAD-
Sec. 2619. Notice

-STATUTE-
(a) In general

Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this subchapter and information pertaining to the filing of a charge.

(b) Penalty

Any employer that willfully violates this section may be assessed a civil money penalty not to exceed $100 for each separate offense.

-SOURCE-
(Pub. L. 103-3, title I, Sec. 109, Feb. 5, 1993, 107 Stat. 19.)

-CITE-
29 USC SUBCHAPTER II - COMMISSION ON LEAVE 01/23/00

-EXPCITE-

TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER II - COMMISSION ON LEAVE

-HEAD-
SUBCHAPTER II - COMMISSION ON LEAVE

-CITE-
29 USC Sec. 2631 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER II - COMMISSION ON LEAVE

-HEAD-
Sec. 2631. Establishment

-STATUTE-
There is established a commission to be known as the Commission on Leave (referred to in this subchapter as the "Commission").

-SOURCE-
(Pub. L. 103-3, title III, Sec. 301, Feb. 5, 1993, 107 Stat. 23.)

-CITE-
29 USC Sec. 2632 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER II - COMMISSION ON LEAVE

-HEAD-
Sec. 2632. Duties

-STATUTE-

The Commission shall -

(1) conduct a comprehensive study of -

(A) existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;

(B) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees;

(C) possible differences in costs, benefits, and impact on productivity, job creation and business growth of such policies on employers based on business type and size;

(D) the impact of family and medical leave policies on the availability of employee benefits provided by employers, including employers not covered under this Act;

(E) alternate and equivalent State enforcement of subchapter I of this chapter with respect to employees described in section 2618(a) of this title;

(F) methods used by employers to reduce administrative costs of implementing family and medical leave policies;

(G) the ability of the employers to recover, under section 2614(c)(2) of this title, the premiums described in such section; and

(H) the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave.

(2) not later than 2 years after the date on which the Commission first meets, prepare and submit, to the appropriate Committees of Congress, a report concerning the subjects listed in paragraph (1).

-SOURCE-

(Pub. L. 103-3, title III, Sec. 302, Feb. 5, 1993, 107 Stat. 23.)

-REFTEXT-

REFERENCES IN TEXT

This Act, referred to in par. (1)(A), (D), is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, known as the Family and Medical Leave Act of 1993, which enacted this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

-CITE-

29 USC Sec. 2633 01/23/00

-EXPCITE-

TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER II - COMMISSION ON LEAVE

-HEAD-

Sec. 2633. Membership

-STATUTE-

(a) Composition

(1) Appointments

The Commission shall be composed of 12 voting members and 4 ex officio members to be appointed not later than 60 days after February 5, 1993, as follows:

(A) Senators

One Senator shall be appointed by the Majority Leader of the Senate, and one Senator shall be appointed by the Minority Leader of the Senate.

(B) Members of House of Representatives

One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of

Representatives shall be appointed by the Minority Leader of the House of Representatives.

(C) Additional members

(i) Appointment

Two members each shall be appointed by -

(I) the Speaker of the House of Representatives;

(II) the Majority Leader of the Senate;

(III) the Minority Leader of the House of Representatives; and

(IV) the Minority Leader of the Senate.

(ii) Expertise

Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor management issues. Such members shall include representatives of employers, including employers from large businesses and from small businesses.

(2) Ex officio members

The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Commerce, and the Administrator of the Small Business Administration shall serve on the Commission as nonvoting ex officio members.

(b) Vacancies

Any vacancy on the Commission shall be filled in the manner in which the original appointment was made. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(c) Chairperson and vice chairperson

The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

(d) Quorum

Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

-SOURCE-

(Pub. L. 103-3, title III, Sec. 303, Feb. 5, 1993, 107 Stat. 24.)

-CITE-
29 USC Sec. 2634 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER II - COMMISSION ON LEAVE

-HEAD-
Sec. 2634. Compensation

-STATUTE-
(a) Pay
Members of the Commission shall serve without compensation.
(b) Travel expenses
Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5 when performing duties of the Commission.

-SOURCE-
(Pub. L. 103-3, title III, Sec. 304, Feb. 5, 1993, 107 Stat. 25.)

-CITE-
29 USC Sec. 2635 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER II - COMMISSION ON LEAVE

-HEAD-
Sec. 2635. Powers

-STATUTE-

(a) Meetings

The Commission shall first meet not later than 30 days after the date on which all members are appointed, and the Commission shall meet thereafter on the call of the chairperson or a majority of the members.

(b) Hearings and sessions

The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(c) Access to information

The Commission may secure directly from any Federal agency information necessary to enable it to carry out this subchapter, if the information may be disclosed under section 552 of title 5. Subject to the previous sentence, on the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) Use of facilities and services

Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(e) Personnel from other agencies

On the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to serve as an Executive Director of the Commission or assist the Commission in carrying out the duties of the Commission. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(f) Voluntary service

Notwithstanding section 1342 of title 31, the chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

-SOURCE-
(Pub. L. 103-3, title III, Sec. 305, Feb. 5, 1993, 107 Stat. 25.)

-CITE-
29 USC Sec. 2636 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER II - COMMISSION ON LEAVE

-HEAD-
Sec. 2636. Termination

-STATUTE-
The Commission shall terminate 30 days after the date of the submission of the report of the Commission to Congress.

-SOURCE-
(Pub. L. 103-3, title III, Sec. 306, Feb. 5, 1993, 107 Stat. 25.)

-CITE-
29 USC SUBCHAPTER III - MISCELLANEOUS PROVISIONS 01/23/00

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER III - MISCELLANEOUS PROVISIONS

-HEAD-
SUBCHAPTER III - MISCELLANEOUS PROVISIONS

-CITE-

-EXPCITE-
TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER III - MISCELLANEOUS PROVISIONS

-HEAD-
Sec. 2651. Effect on other laws

-STATUTE-
(a) Federal and State antidiscrimination laws

Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.

(b) State and local laws

Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.

-SOURCE-
(Pub. L. 103-3, title IV, Sec. 401, Feb. 5, 1993, 107 Stat. 26.)

-REFTEXT-

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, known as the Family and Medical Leave Act of 1993, which enacted this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of this title. For complete classification of this Act to the Code, see

Short Title note set out under section 2601 of this title and Tables.

-MISC2-

EFFECTIVE DATE

Subchapter effective 6 months after Feb. 5, 1993, see section 405(b)(1) of Pub. L. 103-3, set out as a note under section 2601 of this title.

-CITE-

29 USC Sec. 2652 01/23/00

-EXPCITE-

TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER III - MISCELLANEOUS PROVISIONS

-HEAD-

Sec. 2652. Effect on existing employment benefits

-STATUTE-

(a) More protective

Nothing in this Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act.

(b) Less protective

The rights established for employees under this Act or any amendment made by this Act shall not be diminished by any collective bargaining agreement or any employment benefit program or plan.

-SOURCE-

(Pub. L. 103-3, title IV, Sec. 402, Feb. 5, 1993, 107 Stat. 26.)

-REFTEXT-

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, known as the Family and Medical Leave Act of 1993, which enacted this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

-CITE-

29 USC Sec. 2653 01/23/00

-EXPCITE-

TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER III - MISCELLANEOUS PROVISIONS

-HEAD-

Sec. 2653. Encouragement of more generous leave policies

-STATUTE-

Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act.

-SOURCE-

(Pub. L. 103-3, title IV, Sec. 403, Feb. 5, 1993, 107 Stat. 26.)

-REFTEXT-

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, known as the Family and Medical Leave Act of 1993, which enacted this chapter, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

-CITE-

29 USC Sec. 2654 01/23/00

-EXPCITE-

TITLE 29 - LABOR
CHAPTER 28 - FAMILY AND MEDICAL LEAVE
SUBCHAPTER III - MISCELLANEOUS PROVISIONS

-HEAD-

Sec. 2654. Regulations

-STATUTE-

The Secretary of Labor shall prescribe such regulations as are necessary to carry out subchapter I of this chapter and this subchapter not later than 120 days after February 5, 1993.

-SOURCE-

(Pub. L. 103-3, title IV, Sec. 404, Feb. 5, 1993, 107 Stat. 26.)

29 CFR 825.114 - What is a ``serious health condition'' entitling an employee to FMLA leave?
Section Number: 825.114
Section Name: What is a ``serious health condition'' entitling an employee to FMLA leave?

(a) For purposes of FMLA, ``serious health condition'' entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

(1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(2) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(i) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(ii) Any period of incapacity due to pregnancy, or for prenatal care.

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(A) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(B) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(C) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(v) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(b) Treatment for purposes of paragraph (a) of this section includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (a)(2)(i)(B), a

regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(c) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not ``serious health conditions'' unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(e) Absences attributable to incapacity under

paragraphs (a)(2) (ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

29 CFR 825.115 - What does it mean that ``the employee is unable to perform the functions of the position of the employee"?
Section Number: 825.115
Section Name: What does it mean that ``the employee is unable to perform the functions of the position of the employee"?

An employee is ``unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), 42 USC 12101 et seq., and the regulations at 29 CFR Sec. 1630.2(n). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. An employer has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given

or leave commenced, whichever is earlier.

29 CFR 825.200 - How much leave may an employee take?
Section Number: 825.200
Section Name: How much leave may an employee take?

(a) An eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and,

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.

(b) An employer is permitted to choose any one of the following methods for determining the ``12-month period'' in which the 12 weeks of leave entitlement occurs:

(1) The calendar year;

(2) Any fixed 12-month ``leave year,'' such as a fiscal year, a year required by State law, or a year starting on an employee's ``anniversary'' date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave begins; or,

(4) A ``rolling'' 12-month period measured backward from the date an employee uses any FMLA leave (except that such measure may not extend back before August 5, 1993).

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12

weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the ``rolling'' 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 1994, four weeks beginning June 1, 1994, and four weeks beginning December 1, 1994, the employee would not be entitled to any additional leave until February 1, 1995. However, beginning on February 1, 1995, the employee would be entitled to four weeks of leave, on June 1 the employee would be entitled to an additional four weeks, etc.

(d)(1) Employers will be allowed to choose any one of the alternatives in paragraph (b) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employer wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the Act's leave requirements.

(2) An exception to this required uniformity would apply in the case of a multi-State employer who has eligible employees in a State which has a family and medical leave statute. The State may require a single

method of determining the period during which use of the leave entitlement is measured. This method may conflict with the method chosen by the employer to determine ``any 12 months'' for purposes of the Federal statute. The employer may comply with the State provision for all employees employed within that State, and uniformly use another method provided by this regulation for all other employees.

(e) If an employer fails to select one of the options in paragraph (b) of this section for measuring the 12-month period, the option that provides the most beneficial outcome for the employee will be used. The employer may subsequently select an option only by providing the 60-day notice to all employees of the option the employer intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employer may implement the selected option.

(f) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employer closing the plant for retooling or repairs), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in Sec. 825.205.

29 CFR 825.217 - What is a ``key employee''?
Section Number: 825.217
Section Name: What is a ``key employee''?

(a) A ``key employee'' is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

(b) The term ``salaried'' means ``paid on a salary basis,'' as defined in 29 CFR 541.118. This is the Department of Labor regulation defining employees who may qualify as exempt from the minimum wage and overtime requirements of the FLSA as executive, administrative, and professional employees.

(c) A ``key employee'' must be ``among the highest paid 10 percent'' of all the employees--both salaried and non-salaried, eligible and ineligible--who are employed by the employer within 75 miles of the worksite.

(1) In determining which employees are among the highest paid 10 percent, year-to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, e.g., stock options, or benefits or perquisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employer's employees within 75 miles of the worksite may be ``key employees.''

29 CFR 825.220 - How are employees protected who request leave or otherwise assert FMLA rights?
Section Number: 825.220
Section Name: How are employees protected who request leave or otherwise assert FMLA rights?

(a) The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights.

More specifically, the law contains the following employee protections:

(1) An employer is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the Act.

(2) An employer is prohibited from discharging or in any other way discriminating against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the Act.

(3) All persons (whether or not employers) are prohibited from discharging or in any other way discriminating against any person (whether or not an employee) because that person has--

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to this Act;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under this Act;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under this Act.

(b) Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. ``Interfering with'' the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employer to avoid responsibilities under FMLA, for example:

(1) transferring employees from one worksite to another for the purpose of reducing worksites, or to keep worksites, below the 50-employee threshold for employee eligibility under the Act;

(2) changing the essential functions of the job in order to preclude the taking of leave;

(3) reducing hours available to work in order to avoid employee eligibility.

(c) An employer is prohibited from discriminating

against employees or prospective employees who have used FMLA leave. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under ``no fault'' attendance policies.

(d) Employees cannot waive, nor may employers induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot ``trade off'' the right to take FMLA leave against some other benefit offered by the employer. This does not prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a ``light duty'' assignment while recovering from a serious health condition (see Sec. 825.702(d)). In such a circumstance the employee's right to restoration to the same or an equivalent position is available until 12 weeks have passed within the 12-month period, including all FMLA leave taken and the period of ``light duty.''

(e) Individuals, and not merely employees, are protected from retaliation for opposing (e.g., file a complaint about) any practice which is unlawful under the Act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or regulations.

29 CFR 825.300 - What posting requirements does the Act place on employers?
Section Number: 825.300
Section Name: What posting requirements does the Act place on employers?

(a) Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, whether or not it has any ``eligible'' employees, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Employers may duplicate the text of the notice contained in Appendix C of this part, or copies of the required notice may be obtained from local offices of the Wage and Hour Division. The poster and the text must be large enough to be easily read and contain fully legible text.

(b) An employer that willfully violates the posting requirement may be assessed a civil money penalty by the Wage and Hour Division not to exceed $100 for each separate offense. Furthermore, an employer that fails to post the required notice cannot take any adverse action against an employee, including denying FMLA leave, for failing to furnish the employer with advance notice of a need to take FMLA leave.

(c) Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer shall be responsible for providing the notice in a language in which the employees are literate.

29 CFR 825.301 - What other notices to employees are required of employers under the FMLA?
Section Number: 825.301
Section Name: What other notices to employees are required of employers under the FMLA?

(a)(1) If an FMLA-covered employer has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in

an employee handbook, information concerning FMLA entitlements and employee obligations under the FMLA must be included in the handbook or other document. For example, if an employer provides an employee handbook to all employees that describes the employer's policies regarding leave, wages, attendance, and similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employer's policies regarding the FMLA. Informational publications describing the Act's provisions are available from local offices of the Wage and Hour Division and may be incorporated in such employer handbooks or written policies.

(2) If such an employer does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employer shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA. This notice shall be provided to employees each time notice is given pursuant to paragraph (b), and in accordance with the provisions of that paragraph. Employers may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the nearest office of the Wage and Hour Division to provide such guidance.

(b)(1) The employer shall also provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The written notice must be provided to the employee in a language in which the employee is literate (see Sec. 825.300(c)). Such specific notice must include, as appropriate:

(i) that the leave will be counted against the employee's annual FMLA leave entitlement (see Sec. 825.208);

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so (see Sec. 825.305);

(iii) the employee's right to substitute paid leave and whether the employer will require the substitution of paid leave, and the conditions related to any substitution;

(iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (see Sec. 825.210), and the possible consequences of failure to make such payments on a timely basis (i.e., the circumstances under which coverage may lapse);

(v) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment (see Sec. 825.310);

(vi) the employee's status as a ``key employee'' and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (see Sec. 825.218);

(vii) the employee's right to restoration to the same or an equivalent job upon return from leave (see Secs. 825.214 and 825.604); and,

(viii) the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (see Sec. 825.213).

(2) The specific notice may include other information--e. g., whether the employer will require periodic reports of the employee's status and intent to return to work, but is not required to do so. A prototype notice is contained in Appendix D of this part, or may be obtained from local offices of the Department of Labor's Wage and Hour Division, which employers may adapt for their use to meet these specific notice requirements.

(c) Except as provided in this subparagraph, the written notice required by paragraph (b) (and by subparagraph (a)(2) where applicable) must be provided to the employee no less often than the first time in each six-month period that an employee gives notice of the

need for FMLA leave (if FMLA leave is taken during the six-month period). The notice shall be given within a reasonable time after notice of the need for leave is given by the employee--within one or two business days if feasible. If leave has already begun, the notice should be mailed to the employee's address of record.

(1) If the specific information provided by the notice changes with respect to a subsequent period of FMLA leave during the six-month period, the employer shall, within one or two business days of receipt of the employee's notice of need for leave, provide written notice referencing the prior notice and setting forth any of the information in subparagraph (b) which has changed. For example, if the initial leave period were paid leave and the subsequent leave period would be unpaid leave, the employer may need to give notice of the arrangements for making premium payments.

(2)(i) Except as provided in subparagraph (ii), if the employer is requiring medical certification or a ``fitness-for-duty'' report, written notice of the requirement shall be given with respect to each employee notice of a need for leave.

(ii) Subsequent written notification shall not be required if the initial notice in the six-months period and the employer handbook or other written documents (if any) describing the employer's leave policies, clearly provided that certification or a ``fitness-for-duty'' report would be required (e.g., by stating that certification would be required in all cases, by stating that certification would be required in all cases in which leave of more than a specified number of days is taken, or by stating that a ``fitness-for-duty'' report would be required in all cases for back injuries for employees in a certain occupation). Where subsequent written notice is not required, at least oral notice shall be provided. (See Sec. 825.305(a).)

(d) Employers are also expected to responsively answer questions from employees concerning their rights and

responsibilities under the FMLA.

(e) Employers furnishing FMLA-required notices to sensory impaired individuals must also comply with all applicable requirements under Federal or State law.

(f) If an employer fails to provide notice in accordance with the provisions of this section, the employer may not take action against an employee for failure to comply with any provision required to be set forth in the notice.

[60 FR 2237, Jan. 6, 1995; 60 FR 16383, Mar. 30, 1995]

29 CFR 825.303 - What are the requirements for an employee to furnish notice to an employer where the need for FMLA leave is not foreseeable?

Section Number: 825.303

Section Name: What are the requirements for an employee to furnish notice to an employer where the need for FMLA leave is not foreseeable?

(a) When the approximate timing of the need for leave is not foreseeable, an employee should give notice to the employer of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case. It is expected that an employee will give notice to the employer within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. In the case of a medical emergency requiring leave because of an employee's own serious health condition or to care for a family member with a serious health condition, written advance notice pursuant to an employer's internal rules and procedures may not be required when FMLA leave is involved.

(b) The employee should provide notice to the employer either in person or by telephone, telegraph, facsimile (``fax'') machine or other electronic means. Notice may be given by the employee's spokesperson (e.g., spouse, adult

family member or other responsible party) if the employee is unable to do so personally. The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may only state that leave is needed. The employer will be expected to obtain any additional required information through informal means. The employee or spokesperson will be expected to provide more information when it can readily be accomplished as a practical matter, taking into consideration the exigencies of the situation.

29 CFR 825.304 - What recourse do employers have if employees fail to provide the required notice?
Section Number: 825.304
Section Name: What recourse do employers have if employees fail to provide the required notice?

(a) An employer may waive employees' FMLA notice obligations or the employer's own internal rules on leave notice requirements.

(b) If an employee fails to give 30 days notice for foreseeable leave with no reasonable excuse for the delay, the employer may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice to the employer of the need for FMLA leave.

(c) In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employer's proper posting of the required notice at the worksite where the employee is employed. Furthermore, the need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption

at some unknown point in the future would not be sufficient.

29 CFR 825.305 - When must an employee provide medical certification to support FMLA leave?
Section Number: 825.305
Section Name: When must an employee provide medical certification to support FMLA leave?

(a) An employer may require that an employee's leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An employer must give notice of a requirement for medical certification each time a certification is required; such notice must be written notice whenever required by Sec. 825.301. An employer's oral request to an employee to furnish any subsequent medical certification is sufficient.

(b) When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(c) In most cases, the employer should request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave

commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the leave or its duration.

(d) At the time the employer requests certification, the employer must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. The employer shall advise an employee whenever the employer finds a certification incomplete, and provide the employee a reasonable opportunity to cure any such deficiency.

(e) If the employer's sick or medical leave plan imposes medical certification requirements that are less stringent than the certification requirements of these regulations, and the employee or employer elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (see Sec. 825.207), only the employer's less stringent sick leave certification requirements may be imposed.

29 CFR 825.306 - How much information may be required in medical certifications of a serious health condition?
Section Number: 825.306
Section Name: How much information may be required in medical certifications of a serious health condition?

(a) DOL has developed an optional form (Form WH-380, as revised) for employees' (or their family members') use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements. (See Appendix B to these regulations.) This optional form reflects certification requirements so as to permit the health care provider to furnish appropriate medical information within his or her knowledge.

(b) Form WH-380, as revised, or another form containing the same basic information, may be used by

the employer; however, no additional information may be required. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists. The form identifies the health care provider and type of medical practice (including pertinent specialization, if any), makes maximum use of checklist entries for ease in completing the form, and contains required entries for:

(1) A certification as to which part of the definition of ``serious health condition'' (see Sec. 825.114), if any, applies to the patient's condition, and the medical facts which support the certification, including a brief statement as to how the medical facts meet the criteria of the definition.

(2)(i) The approximate date the serious health condition commenced, and its probable duration, including the probable duration of the patient's present incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom) if different.

(ii) Whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis (i.e., part-time) as a result of the serious health condition (see Sec. 825.117 and Sec. 825.203), and if so, the probable duration of such schedule.

(iii) If the condition is pregnancy or a chronic condition within the meaning of Sec. 825.114(a)(2)(iii), whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(3)(i)(A) If additional treatments will be required for the condition, an estimate of the probable number of such treatments.

(B) If the patient's incapacity will be intermittent, or will require a reduced leave schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and

period required for recovery if any.

(ii) If any of the treatments referred to in subparagraph (i) will be provided by another provider of health services (e.g., physical therapist), the nature of the treatments.

(iii) If a regimen of continuing treatment by the patient is required under the supervision of the health care provider, a general description of the regimen (see Sec. 825.114(b)).

(4) If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), whether the employee:

(i) Is unable to perform work of any kind;

(ii) Is unable to perform any one or more of the essential functions of the employee's position, including a statement of the essential functions the employee is unable to perform (see Sec. 825.115), based on either information provided on a statement from the employer of the essential functions of the position or, if not provided, discussion with the employee about the employee's job functions; or

(iii) Must be absent from work for treatment.

(5)(i) If leave is required to care for a family member of the employee with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery. The employee is required to indicate on the form the care he or she will provide and an estimate of the time period.

(ii) If the employee's family member will need care only intermittently or on a reduced leave schedule basis (i.e., part-time), the probable duration of the need.

(c) If the employer's sick or medical leave plan requires less information to be furnished in medical certifications than the certification requirements of these regulations,

and the employee or employer elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (see Sec. 825.207), only the employer's lesser sick leave certification requirements may be imposed.

29 CFR 825.307 - What may an employer do if it questions the adequacy of a medical certification?
Section Number: 825.307
Section Name: What may an employer do if it questions the adequacy of a medical certification?

(a) If an employee submits a complete certification signed by the health care provider, the employer may not request additional information from the employee's health care provider. However, a health care provider representing the employer may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification.

(1) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employer or the employer's representative to have direct contact with the employee's workers' compensation health care provider, the employer may follow the workers' compensation provisions.

(2) An employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the Act, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid

or unpaid leave under the employer's established leave policies. The employer is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employer. See also paragraphs (e) and (f) of this section.

(b) The employer may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employer is located in an area where access to health care is extremely limited (e.g., a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employer and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employer that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

(d) The employer is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within two business

days unless extenuating circumstances prevent such action.

(e) If the employer requires the employee to obtain either a second or third opinion the employer must reimburse an employee or family member for any reasonable ``out of pocket'' travel expenses incurred to obtain the second and third medical opinions. The employer may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) In circumstances when the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employer shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country. [60 FR 2237, Jan. 6, 1995; 60 FR 16383, Mar. 30, 1995]

29 CFR 825.312 - Under what circumstances may a covered employer refuse to provide FMLA leave or reinstatement to eligible employees?
Section Number: 825.312
Section Name: Under what circumstances may a covered employer refuse to provide FMLA leave or reinstatement to eligible employees?

(a) If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employer may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the employer of the need for FMLA leave. (See Sec. 825.302.)

(b) If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employer may delay continuation of FMLA leave until an

employee submits the certificate. (See Secs. 825.305 and 825.311.) If the employee never produces the certification, the leave is not FMLA leave.

(c) If an employee fails to provide a requested fitness-for-duty certification to return to work, an employer may delay restoration until the employee submits the certificate. (See Secs. 825.310 and 825.311.)

(d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Thus, an employee's rights to continued leave, maintenance of health benefits, and restoration cease under FMLA if and when the employment relationship terminates (e.g., layoff), unless that relationship continues, for example, by the employee remaining on paid FMLA leave. If the employee is recalled or otherwise re-employed, an eligible employee is immediately entitled to further FMLA leave for an FMLA-qualifying reason. An employer must be able to show, when an employee requests restoration, that the employee would not otherwise have been employed if leave had not been taken in order to deny restoration to employment. (See Sec. 825.216.)

(e) An employer may require an employee on FMLA leave to report periodically on the employee's status and intention to return to work. (See Sec. 825.309.) If an employee unequivocally advises the employer either before or during the taking of leave that the employee does not intend to return to work, and the employment relationship is terminated, the employee's entitlement to continued leave, maintenance of health benefits, and restoration ceases unless the employment relationship continues, for example, by the employee remaining on paid leave. An employee may not be required to take more leave than necessary to address the circumstances for which leave was taken. If the employee is able to return to work earlier than anticipated, the employee shall provide

the employer two business days notice where feasible; the employer is required to restore the employee once such notice is given, or where such prior notice was not feasible.

(f) An employer may deny restoration to employment, but not the taking of FMLA leave and the maintenance of health benefits, to an eligible employee only under the terms of the ``key employee'' exemption. Denial of reinstatement must be necessary to prevent ``substantial and grievous economic injury'' to the employer's operations. The employer must notify the employee of the employee's status as a ``key employee'' and of the employer's intent to deny reinstatement on that basis when the employer makes these determinations. If leave has started, the employee must be given a reasonable opportunity to return to work after being so notified. (See Sec. 825.219.)

(g) An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA's job restoration or maintenance of health benefits provisions.

(h) If the employer has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employer which does not have such a policy may not deny benefits to which an employee is entitled under FMLA on this basis unless the FMLA leave was fraudulently obtained as in paragraph (g) of this section. [60 FR 2237, Jan. 6, 1995; 60 FR 16383, Mar. 30, 1995]

29 CFR 825.400 - What can employees do who believe that their rights under FMLA have been violated?
Section Number: 825.400
Section Name: What can employees do who believe that their rights under FMLA have been violated?

(a) The employee has the choice of:

(1) Filing, or having another person file on his or her behalf, a complaint with the Secretary of Labor, or

(2) Filing a private lawsuit pursuant to section 107 of FMLA.

(b) If the employee files a private lawsuit, it must be filed within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful.

(c) If an employer has violated one or more provisions of FMLA, and if justified by the facts of a particular case, an employee may receive one or more of the following: wages, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or, where no such tangible loss has occurred, such as when FMLA leave was unlawfully denied, any actual monetary loss sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages for the employee. In addition, the employee may be entitled to interest on such sum, calculated at the prevailing rate. An amount equalling the preceding sums may also be awarded as liquidated damages unless such amount is reduced by the court because the violation was in good faith and the employer had reasonable grounds for believing the employer had not violated the Act. When appropriate, the employee may also obtain appropriate equitable relief, such as employment, reinstatement and promotion. When the employer is found in violation, the employee may recover a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action from the employer in addition to any judgment awarded by the court.

Rule 8. General Rules of Pleading

(a) CLAIMS FOR RELIEF. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) DEFENSES; FORM OF DENIALS. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set for in Rule 11.

(c) AFFIRMATIVE DEFENSES. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, fraud, illegality, injury by fellow servant, laches, license, payment, release res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counter claim as a defense, the court on terms, if justice so requires, h=shall treat the pleading as if there had been a proper designation.

(d) EFFECT OF FAILURE TO DENY. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All

statements shall be made subject to the obligations set forth in Rule 11.

(f) CONSTRUCTION OF PLEADINGS. All pleadings shall be so construed as to do substantial justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LORI D. RHOADS,

Plaintiff,

v. Civil No.
CCB-94-1548

FEDERAL DEPOSIT
INSURANCE CORP. AS
RECEIVER FOR STANDARD
FEDERAL SAVINGS
ASSOCIATION,

Defendant.

VERDICT FORM

1. Has the plaintiff, Lori Rhoads, proven by a preponderance of the evidence that the reasons given by the FDIC for her termination were false and that retaliation for her protected conduct under the ADA was the true reason for that termination?

Yes __√__ No _____

If your answer to Question 1 is "No," stop here, sign and date the form. If your answer to Question 1 is "Yes," proceed to Question 2.

2. Has the FDIC proved, by a preponderance of the evidence, that the Plaintiff would have been terminated from her job no later than October 1993

because of unconsented tape recordings?

Yes _____ No ____√____

Proceed to Question 3.

3. Has the FDIC proved, by a preponderance of the evidence, that the Plaintiff failed to mitigate her damages following her termination?

Yes _____ No ____√____

Proceed to Question 4.

4. Considering your answers to Questions 2 and 3, what amount of damages, if any, has the Plaintiff proved, by a preponderance of the evidence, that she is entitled to be awarded against the FDIC for:

monetary damages (I.e., back pay, benefits): $12,0006

"s/ Philip S. Rosenfeld"
Foreperson

Dated: December 12, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LORI D. ROADS,

v. Civil No. B-94-1548

FEDERAL DEPOSIT
INSURANCE CORPORATION
As Receiver for Standard
Federal Savings Association,
et. al.

SPECIAL VERDICT FORM

Question 1: Has the plaintiff proved, by a preponderance of the evidence, that she worked at least 1,250 hours for Standard Federal Savings Association between September 1, 1992, and August 31, 1993?

Yes __√__ No _____

Question 2: Has the plaintiff proved, by a preponderance of the evidence, that she had a "serious health condition" at any time between September 1 and September 15, 1993?

In order to answer this question, you should answer the following subparts of Question 2:

Question 2(a): Has the plaintiff proved, by a

preponderance of the evidence, at any time between September 1 and September 15, 1993, she had a period of incapacity requiring absence from work, school or other regular daily activities for more than three consecutive days?

Yes _____ No ____X_____

If your answer to Question 2(a) is "No," please stop. Do not answer the remaining questions. Please sign and date the last page of this form. If your answer to Question 2(a) is "Yes," please proceed to answer Question 2(b).

Question 2(b): Has the plaintiff proved, by a preponderance of the evidence, that she was, at any time between September 1 and September 15, 1993, receiving continuing treatment by (or under the supervision of) a health care provider?

Yes _____ No _____

If your answer to Question 2(b) is "No," please stop. Do not answer the remaining questions. Please sign and date the last page of this form. If your answer to Question 2(b) is "Yes," please proceed to answer Question 2(c).

Question 2(c): Has the plaintiff proved, by a preponderance of the evidence, that a health care provider found, at the time of her alleged serious health condition, that the plaintiff was unable to work at all or to perform any one or more of the essential functions of her job at any time between September 1 and September 15, 1993?

Yes _____ No _____

If your answer to Question 2(c) is "No," please stop. Do not answer the remaining questions. Please sign and date the last page of this form. If your answer to Question 2(c) is "Yes," please proceed to answer Question 3.

Question 3: Has the plaintiff proved, by a preponderance of the evidence, that as soon as practicable between September 1, and September 15, 1993, she met her notice obligations under the FMLA?

Yes _____ No _____

If your answer to Question 3 is "No," please stop. Do not answer the remaining questions. Please sign and date the last page of this form. If your answer to Question 3 is "Yes," please proceed to answer Question 4.

Question 4: Has the plaintiff proved, by a preponderance of the evidence, that she sustained damages caused directly by the defendant's actions?

Yes _____ No _____

If your answer to Question 4 is "No," please stop. Do not answer the remaining questions. Please sign and date the last page of this form. If your answer to Question 4 is "Yes," please proceed to answer Question 5.

Question 5: Has the defendant proved, by a preponderance of the evidence, that plaintiff would have been terminated from her job no later than October 1993 based on the alleged after-acquired evidence relating

to secret tape recordings?

Yes _____ No _____

If your answer to Question 5 is "No," please stop. Do not answer the remaining questions. Please sign and date the last page of this form. If your answer to Question 5 is "Yes," please proceed to answer Question 6.

Question 6: Has the defendant proved, by a preponderance of the evidence, that plaintiff would have been terminated from her job based on the alleged abolition of her position?

Yes _____ No _____

If your answer to Question 6 is "Yes" please proceed to Question 7 and answer Question 7 with this answer in mind. If your answer to Question is "No,' please proceed to Question 7.

Question 7: What amount of damages, if any, has the plaintiff proved, by a preponderance of the evidence, that she is entitled to be awarded against defendants?

$_____

_____

Foreperson

Date: March __, 1998

at _____ o'clock _____.m.